

United States Postal Service and American Postal Workers Union, Local 5188, AFL-CIO. Case 16-CA-17196(P)

August 27, 1996

DECISION AND ORDER

BY MEMBERS BROWNING, COHEN, AND FOX

On March 25, 1996, Administrative Law Judge Richard J. Linton issued the attached decision. The Respondent filed exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings, and conclusions and to adopt the recommended Order, as modified.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified¹ and orders that the Respondent, United States Postal Service, Lake Jackson, Texas, its officers, agents, successors, and assigns, shall take the action set forth in the Order, as modified.

1. Substitute the following for paragraphs 2(b) and (c).

“(b) Within 14 days after service by the Region, post at its facility at Lake Jackson, Texas, copies of the attached notice marked “Appendix.”⁵ Copies of the notice, on forms provided by the Regional Director for Region 16, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since February 10, 1995.

“(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.”

¹ We shall modify the judge's recommended Order in accordance with our decision in *Indian Hills Care Center*, 321 NLRB 144 (1996).

Olivia Boultt, Esq., for the General Counsel.

Thomas H. Pigford, Esq. (U.S. Postal Service), of Memphis, Tennessee, for the Respondent.

Alan S. Harrell, Vice President, Local 5188, of Lake Jackson, Texas, for the Charging Party.

DECISION

STATEMENT OF THE CASE

RICHARD J. LINTON, Administrative Law Judge. This is a refusal to bargain case. The Government contends that, under the National Labor Relations Act, 29 U.S.C. § 158(a)(5), the U.S. Postal Service must comply with the Union's blanket request for copies (relevant to a grievance) of the personnel files (exclusive of medical records) of two employees (Dawn Hamilton and Bonnie Powell) because such production is permitted under the “routine use” exception of the Privacy Act, 5 U.S.C. § 552a(b)(3), where the Postal Service has made no effort to classify specific items as confidential. Opposing, the Postal Service contends that a blanket request for the entire personnel files (excluding medical records) is too broad to fit within the “routine use” exception, and therefore, particularly when the Postal Service offered limited disclosure if the Union would name specific items, the Privacy Act prohibits the Postal Service from granting the Union's overbroad request to disclose such personnel records. Finding for the Government, I order the Postal Service to furnish the requested copies to the Union.

I presided at this 1-day trial in Houston, Texas, on August 24, 1995, pursuant to the May 31, 1995 complaint and notice of hearing (complaint) issued by the General Counsel of the National Labor Relations Board, through the Regional Director for Region 16. The complaint is based on a charge filed February 10, 1995, by American Postal Workers Union, Local 5188, AFL-CIO (Union, Local 5188, or Charging Party) against United States Postal Service (Respondent, Postal, Postal Service, or USPS). The pleadings establish, and I find, that the Board has jurisdiction over Respondent in this matter by virtue of Section 1209 of the Postal Reorganization Act, and that the Union is a statutory labor organization. The postal facility involved here is Respondent's post office at Lake Jackson, Texas.

Complaint paragraph 10 alleges that, since February 7, 1995,¹ the Union, by letter, “has requested that Respondent furnish a copy of the personnel files for employees Bonnie Powell and Dawn Hamilton exclusive of medical records.” Respondent admits. Complaint paragraph 11 alleges that the information requested by the Union is necessary for and relevant to the Union's performance of the duties as the exclusive collective-bargaining representative of the unit. Postal denies. Complaint paragraph 12 alleges that, since about February 7, 1995, Respondent Postal, by and through its superintendent of postal operations, M.C. Kelly, “has failed and refused, and continues to fail and refuse, to furnish to the Union the information requested as described above in paragraphs 10 and 11.” Postal denies. The refusal allegedly violates Section 8(a)(5) of the Act. Postal also denies that allegation.

On the entire record, including my observation of the demeanor of the witnesses, and after consideration of the briefs

¹ All dates are for 1995 unless otherwise stated.

filed by the General Counsel and the Postal Service, I make these findings and conclusions.

FINDINGS OF FACT

A. Background

1. Facts mostly undisputed

After calling Alan S. Harrell, the Union's steward, the General Counsel rested. (1:149.) Postal Service called Donna H. Kinsel, a senior labor relations specialist for Postal Service's Houston District, and Myron Charles Kelly, a customer service supervisor at Lake Jackson, and rested. (1:225–226.) Kinsel gave general information, while Kelly testified as to the specific events as Harrell did for the General Counsel. There was no rebuttal stage. The facts are mostly undisputed. Perhaps the only disputed factual item is whether Kelly gave Harrell certain sanitized copies of some Form 50s. As I describe later, I credit Kelly that he did so, and I disbelieve Harrell's denial.

2. The parties

As established by the pleadings, since 1971 the American Postal Workers Union, AFL–CIO (APWU), has been the exclusive collective-bargaining representative for employees in the following bargaining unit at Respondent's Lake Jackson facility:

All maintenance employees, special delivery employees, motor vehicle employees and postal clerks, but excluding all other employees, guards and supervisors as defined in the Act.

Since 1971, I find, Postal Service has recognized the APWU as the exclusive bargaining representative for the unit's employees, and this recognition has been embodied in successive collective-bargaining agreements (CBAs). The most recent CBA, or contract, was effective initially, by its terms, from June 12, 1991, through November 20, 1994. (G.C. Exh. 5 at 219.)² The parties stipulated that the contract has been extended and remains in effect. (1:51–52.) The pleadings also establish, and I find, that at all times since 1971, based on Section 9(a) of the Act, the APWU has been the exclusive bargaining representative of the unit. (Complaint paragraph 8, which the Postal Service's answer admits, names the National Association of Letter Carriers as the exclusive bargaining representative. In view of the other admitted allegations, and the record, including the recognition clause of the contract (G.C. Exh. 5 at 1), I find that reference to NALC was inadvertent, and that the intended allegation, understood by the Postal Service, was to APWU.)

As clarified at the beginning of the trial (1:8–9), Postal Service admits, for the purposes of this proceeding, the complaint paragraph 9 allegation that at all material times the Union (Local 5188) has been acting as APWU's agent respecting employees in the Lake Jackson bargaining unit.

²References to the one-volume transcript of testimony are by volume and page. Exhibits are designated G.C. Exh. for the General Counsel's and R. Exh. for those of Respondent USPS.

3. The underlying dispute

Dawn Hamilton and Bonnie Powell are part-time flexible (PTF) clerks at Lake Jackson. (1:28; G.C. Exh. 5 at 15.) Hamilton has more seniority at Lake Jackson than does Powell. (1:148, 191.) However, as Supervisor Kelly testified, seniority is not considered by management in making job assignments to PTFs because, as PTFs are not regular career employees under the contract, management is not restricted by seniority in making job assignments. (1:191–193.) The underlying dispute here pertains to whether management may choose Powell over Hamilton for assignment to relief window clerk duties. At the time of events here, a 1994 grievance (number 5188–943, or simply, 943) was pending arbitration over an actual assignment of Powell, rather than the more senior Hamilton, to relief window clerk duties. (1:28, 135–136.) Later, it was determined by management that training for such duties was required, for legal reasons, to protect the Postal Service. (1:223–225.) Management then scheduled Powell rather than Hamilton for that training, with the training to begin in early February 1995. (1:215–216.) The job assignment dispute is the root source of the current dispute. (1:121–122.)

4. The current dispute

a. Grievances filed

(1) Grievance 952—copies of personnel files

After conferring with Hamilton in early February 1995, Union Steward Harrell considered filing a grievance over the February 1995 training assignment. (1:27–29.) To facilitate the Union's chances for a successful grievance, on February 7, 1995, Harrell submitted a written request, dated February 6, requesting copies of the official personnel files (OPFs, 1:125), excluding medical records, of Powell and Hamilton. (G.C. Exh. 2; 1:26, 185.) The request gives no reason for this blanket request other than, as stated on the preprinted form, that the copies are requested so that the Union may “identify whether a grievance exists and, if so,” to enable the Union to determine the relevancy of the documents to the grievance.

Later that day, after conferring with the local postmaster, Michael Heitmann (who apparently conferred, at some point that day, with Donna Kinsel (1:153–154), Kelly told Harrell that Kelly could not furnish copies of the personnel files, but that (as Kelly wrote on the bottom of the request form which he returned to Harrell) an employee could review her personnel file with the steward present. (1:186, 197–199, 211–213, 217.) Harrell said that was unacceptable and expressed his view that he had a right to copies of the entire files, less the medical records. (1:30, 186.) Harrell never explained why he needed copies of the entire files, nor did Kelly say anything about confidential material. Neither, apparently, did Kelly mention the Privacy Act. However, Harrell is aware that the Privacy Act applies to Postal Service and covers release of official personnel files. (1:143.) Kelly acknowledges (1:215–217) that he assumed the request pertained to the 1994 grievance and to the February 1995 training assignment. Even so, he did not review the personnel files to ascertain relevancy because “we do not give copies of personnel files out.” (1:217–218.)

The next day, February 8, Harrell filed a grievance, oral at Step 1, but which became grievance 5188-952 (952, herein), by which the Union protested the "Refusal to provide information necessary to file grievances." (G.C. Exh. 3.) Supervisor Kelly denied the Step-1 grievance on the same basis that he had denied the request, and Harrell again expressed his view that he had a right to copies of the entire files, less the medical records. (1:31-35.) Again, neither explained the basis for his position. The Union appealed to Step 2. (G.C. Exh. 3.) At Step 2, held February 15, Harrell expressed his same position, that he was entitled to the copies as requested. Postmaster Heitmann said that Postal Service was not obligated to furnish entire personnel files and (now opening the door a bit) stated that Harrell would have to be more specific. (1:41-42.) In the absence of specifics from Harrell, Heitmann denied the grievance, and followed up with a letter to Harrell. After an introductory paragraph, the text states (G.C. Exh. 3 at 2):

Your request [G.C. Exh. 2] was for the copies of the personnel folders for PTF Bonnie Powell and PTF Dawn Hamilton. Supr. Kelly informed you that an employee would be allowed to review their personnel folders in your presence if requested by the employee.

In our Step II meeting you informed me that the only documentation that you would accept would be complete copies of Ms. Powell and Ms. Hamilton's personnel folders. You were informed that if you would be more specific in what relevant documentation you wish to review it would be made available to you. Such documentation could consist of but not limited to, Training Records etc. Art. 17.3 of the National Agreement gives you the right to review records necessary to process a grievance or determine if a grievance exists. If you will be more specific in what records you require your request will not be unreasonably denied.

After reviewing all facts of this case, I can find no violation of the National Agreement. The grievance is therefore denied.

The Union appealed to Step 3. (G.C. Exh. 4.) In its Step-3 appeal, the Union, in a two-page attachment containing its position statement, debates certain points, such as whether it had been or needed to be specific. Finally, in the penultimate paragraph, number 5, the Union writes (G.C. Exh. 4, emphasis added):

5. The Union's informational request was made in good faith. *The relevancy will be shown in Grievance #5188953 which follows.* [See the next topic.]. Steps 1 and 2 of Grievance #5188953 have been held, despite the Union's being crippled by the lack of information necessary to process that grievance.

The Union's Step-3 appeal was denied by a document which was not offered in evidence. (1:46-47.) The grievance procedure normally ends, before arbitration, at Step 3 (1:38), and grievance 952 currently is pending arbitration. (1:46.)

(2) Grievance 953—window training

In the meantime, the Union filed grievance 5188-953 (953, herein). This is the "Hamilton" grievance (1:36, 48, 56, 95-96, 138), or the "core" grievance (1:129, 138, 145),

as Harrell alternatively describes it, or even the "training" grievance. Although referenced as "Seniority," the focus of the "core" grievance protests the February 1995 window training given to PTF Powell rather than to PTF Hamilton. At Step 1, held February 13, Supervisor Kelly denied the training grievance (the "Hamilton" or "core" grievance). (1:36, 47-48, 55-56, 191, 209-210.) The Union appealed to Step 2 (G.C. Exh. 6), which was denied in part because the 1994 grievance is pending arbitration. (G.C. Exh. 7.) The Union appealed Postmaster Heitmann's denial to Step 3 (G.C. Exh. 8), and that appeal was denied. (1:91.) The APWU decided not to proceed to arbitration on grievance 953, and that "core" grievance, as Harrell describes (1:91), is "dead."

As Harrell asserts (1:77-79), and Kelly acknowledges (1:219), at Step 1 of the "core" grievance Harrell read his entire six-page position statement (G.C. Exh. 9) to Kelly, and then supplied Kelly with a copy of the statement. Harrell's position statement is typed single space, and except for a couple of short pages, it utilizes the full page. After reciting a history of events, starting in 1993, Harrell's statement reaches, at page 3, the Union's argument section. Harrell there advances three grounds: (1) The Rule of Seniority (under which he discusses his contractual argument); (2) The Stated Policies of the USPS on Training and Development (where, as the title suggests, Harrell cites and discusses various Postal Service policies found in training and labor relations manuals); and (3) The Rule of Reasonableness.

Under the last ground cited, Harrell has three lettered paragraphs. In paragraph A he summarizes the claimed superior training, experience, and capability of PTF Dawn Hamilton. In paragraph B he describes the asserted deficiencies of PTF Bonnie Powell. Paragraph C reads (as elsewhere in quoted material, I correct any typos which are not material) (G.C. Exh. 9 at 5):

C. The Union has sought to find some reasonable explanation for Management's actions. It tried to find an answer in Grievance #5188943 [the 1994 grievance pending arbitration] and has tried to find one in this Grievance of Mrs. Hamilton. Yet the Union can find no logical and sound business reason to "promote" Mrs. Powell over Mrs. Hamilton. The Union, however, has found instead allegations of favoritism, cronyism, managerial stubbornness and deal making. The Union also finds from Management's refusal to provide the Union with information to process this grievance, an appearance of impropriety, an attempt to stonewall the Union, and an attempt to thwart Mrs. Hamilton from filing this grievance.

The Union's papers on appeal to Step 2 (G.C. Exh. 6) added to the earlier papers by bringing events up through Step 1. (1:57.) Harrell's three grounds also are repeated. At the Step-2 meeting of February 24 (1:56), Harrell met with Postmaster Heitmann. (1:84.) If anything, Harrell presented his position in more detail. (1:85.) Respecting the request for copies of the personnel files, Heitmann said that Postal Service would not furnish copies of every document generally, and that Harrell was simply on a "fishing" expedition for information. Harrell reiterated his position that he had a right to copies of the entire personnel files, less medical records.

(1:85.) At the Step-1 meeting with Kelly, and at the Step-2 meeting with Heitmann, there was no mention by management of confidentiality or of the Privacy Act. (1:85–86.)

(3) Grievance 954—copies of supporting documents

The final grievance is 5188–954 (954, herein). Based on a refusal to provide information, grievance 954 (G.C. Exh. 10) focuses on obtaining “Copies of all documents or records which refer to or reflect the factors causing you to deny the above referenced Grievance.” (This is a reference to the “Hamilton” or training grievance, grievance 953, G.C. Exhs 6, 7, 8.) (G.C. Exh. 10 at 3; 1:110–111.) The Union wanted to see Respondent’s support for Kelly’s references, at the Step-1 denial of the “Hamilton” or “core” grievance, to Powell’s experience, training, and efficiency. (1:111.) Harrell concedes that he had no specific documents in mind, but that he wanted copies of whatever documents Kelly had in mind. (1:118–121.) Denying grievance 954, Supervisor Kelly told Harrell that he had to be more specific. (1:112.) Harrell submitted a February 15 letter (G.C. Exh. 10 at 4) requesting reconsideration, but his request was rejected. (1:112.) The Step-2 appeal (G.C. Exh. 10; 1:115) was denied by Postmaster Heitmann’s decision letter. (G.C. Exh. 11) of March 9 (1:113, 116.) Heitmann’s March 9 denial letter states, in relevant part (G.C. Exh. 11):

Management must again require that you be more specific in your request as it would be next to impossible to provide you with a copy of every document used, for example: The National Agreement, acquired knowledge etc.

After reviewing all facts of this case, I can find no violation of the National Agreement. The grievance is therefore denied.

The Union’s appeal to Step 3 was denied (no documents in evidence), and grievance 954 is pending arbitration. (1:113, 135–136.) Harrell testified that he never received any documents pursuant to the request which is the subject of grievance 954. (1:117.)

b. Specific requests granted

At times during the grievance steps, Harrell requested specific items, and Postal Service granted these requests. Thus, by his written request (G.C. Exh. 8 at 4) dated February 23, Harrell requested copies of the clerks’ schedule for the week of February 25 through March 3. (1:67. Harrell admits that Postal Service supplied that document. (1:90, 132; G.C. Exh. 8 at 5.)

According to Harrell, he never specifically asked for certain training documents. (1:86.) Nevertheless, he concedes that, at the Step-2 meeting on the training, or “Hamilton,” grievance, Postmaster Heitmann tendered him two documents showing training for Powell. (1:67, 86, 132–133; G.C. Exh. 8 at 6–7.) Harrell acknowledges that Heitmann told him that if Harrell would name documents, Heitmann would try to furnish them. (1:133–134, 143.)

Although it is not certain that Harrell requested certain items during the investigation of the instant unfair labor practice charge, Supervisor Kelly furnished them to Harrell on the report (from a paralegal in Postal Service’s legal office) that the specific items were in question. Thus, to show se-

niority dates and related items, Kelly gave Harrell sanitized copies of the Form 50s (personal and job history data forms, as shown by R. Exh. 3, 1:199–200) of Powell and Hamilton. (1:186–191, 202–209.) To the extent Harrell’s denial of ever receiving anything other than the clerks’ schedule and the training records (1:86–88), and his denial of ever receiving the Form 50s (1:89), states that Kelly did not give him the sanitized versions of the Form 50s, I do not credit Harrell. Crediting Kelly, I find that Kelly furnished the sanitized Form 50s to Harrell as Kelly described.

According to Harrell, he never requested any disciplinary records of either Powell or of Hamilton. (1:134.) Nevertheless, Harrell admits that, if ever given copies of the files, one item he will look for will be records of any disciplinary action. (1:94.) On the report that awards and discipline were in question during the charge investigation, Kelly, after searching the personnel files, told Harrell that there were no certificates of achievement and no records of disciplinary actions. (1:195–196.)

B. Discussion

1. The regulatory scheme

Congress has placed the Postal Service under the jurisdiction of the Board, to the extent not inconsistent with the Postal Reorganization Act (PRA), 39 U.S.C. § 1209(a). Congress has also, through the PRA, at 39 U.S.C. § 410(b)(1), subjected Postal Service to the Privacy Act of 1974, 5 U.S.C. § 552a.

If the Respondent here were a private sector employer, not subject to the Privacy Act, and with a CBA such as exists here, the proper request of the Union, as the exclusive bargaining representative, might well have to be honored. See *Bloomsburg Craftsmen*, 276 NLRB 400 (1985). But where files, such as personnel files, contain confidential information as well as information which is not confidential, only a blanket refusal by the employer constitutes a violation. *Barcardi Corp.*, 296 NLRB 1220, 1224 (1989). Even Postal Service’s initial response, restrictive as it was, was not a blanket refusal. And thereafter, Postal Service began asking Harrell to be specific, assuring him that it would seek to accommodate his request. Then, at the February 13 Step-1 meeting on the “core” grievance, Harrell first set forth in detail his three grounds of need and of relevancy.

The Privacy Act contains an exception, pertinent here, authorizing disclosures for “routine use.” 5 U.S.C. § 552a(b)(3). The term “routine use” is defined, 5 U.S.C. § 552a(a)(7), as a use “for a purpose which is *compatible* with the purpose for which it was collected.” (Emphasis added.) *Postal Service v. NALC*, 9 F.3d 138, 140 (D.C. Cir. 1993).

Pursuant to the notice requirements of the Privacy Act, Postal Service has published a list of routine uses. That list includes one, Routine Use M, which specifically applies to labor organizations. Routine Use M provides (R. Exh. 1 at internal 334, August 1994, section C.2,m):

m. Disclosure to Labor Organizations

Pursuant to the National Labor Relations Act, records from this system may be furnished to a labor organiza-

tion³ *when needed* [emphasis added] by that organization to perform properly its duties as the collective-bargaining representative of postal employees in an appropriate bargaining unit.

Sections 353.325d and 353.326 of Postal Service's own Administrative Support Manual (R. Exh. 2 at internal 148; 1:166–167) remind management that disclosure to collective-bargaining agents is a routine use exception. When in doubt, a manager is to “obtain the advice of the chief field counsel.” There is even an internal accounting procedure established for disclosure to bargaining representatives of information in OPFs. (R. Exh. 2 at internal 145, section 353.313a.)

2. “Rule of Reason” or a “Fishing” expedition?

Harrell explains his request for copies of the entire personnel files (minus medical records) as being what he needs to analyze Postal Service's decision process in order to determine whether Postal Service made “the most rational choice.” Harrell describes this as the “rule of reason” (1:48–49), and he asserts that the CBA allows for such an approach (1:97, 108) even though (1:140) the three-word term is not itself specified in the contract. Harrell concedes that, in effect, this would be “second-guessing” management's decision process. (1:97.) As noted above, Harrell acknowledges (1:85) that, at the February 24 Step-2 meeting of the “core” grievance, Postmaster Heitmann protested that Harrell was simply on a “fishing expedition for information.” In fact, Harrell's own description of his purpose demonstrates that a fishing expedition is exactly what he is seeking. Quite simply, Harrell is seeking production for discovery. Thus, Harrell testified that, on receiving copies of the personnel files (less the medical records), he would look for anything that would support the Union's position that PTF Hamilton would be the superior choice over PTF Powell. (1:42–43.) Harrell wants to be able to argue that he has reviewed the (copies of) the personnel files, and that the files do not support management's decision. (1:94–95.)

Throughout all steps of the grievance procedure, Harrell has insisted that the Union has the right to receive copies of the entire personnel files, excluding medical records. (1:35, 42, 85.) Postal Service has never offered to furnish copies of the personnel files without copies of any matters deemed by management to be confidential. That type offer has not been made. (1:92.) In fact, management did not expressly state that it was not furnishing copies of the files because of confidentiality or because of the Privacy Act. (1:85–86.) However, such failure to mention seems irrelevant if the Privacy Act applies, and, in any event, Harrell is aware that the Privacy Act applies to the Postal Service and covers the release of OPFs. (1:143) Although it would not appear that, for this case, grievance 952 (copies of personnel files) or 954 (copies of supporting documents) needs to rest on an underlying grievance (recall that grievance 953, the training assignment, no longer exists), the 1994 grievance is still pending arbitration, and that grievance involves the same two employees. (1:92.)

³ Oddly, at this point the words “upon its request” may have been omitted inadvertently from this version of Routine Use M. See *U.S. Postal Service v. NALC*, id. at 140, and *Postal Service*, 301 NLRB 709, 713 (1991).

3. Conclusions

The question under the Privacy Act issue, I find, is whether the Union “needed” (Routine Use M) the copies of the OPFs of PTFs Powell and Hamilton. That is similar to asking whether the request was for “relevant” items. As the Union, at least arguably under the contract may grieve on the basis that a more logical choice was available to management, it seems clear that the Union “needed” the copies of the official personnel files (OPFs) of PTFs Powell and Hamilton. I so find. Always casting the burden on the Union to name specific documents, management never made any effort to accommodate both its interests and that of the Union by assuming the burden of classifying specific items, if any, as confidential. Postal Service had that burden and also the burden to negotiate with the Union about such confidential classification in an effort to balance the interests of both the Postal Service and the Union. *Postal Service*, 309 NLRB 309, 312 (1992); *Postal Service*, 307 NLRB 429, 434 (1992).

Because Postal Service was not authorized by the Privacy Act to withhold production of the documents generally, I find, as alleged, that Respondent Postal Service violated 29 U.S.C. § 158(a)(5) when, on and after February 7, 1995, it refused to supply to the Union, in accordance with the Union's written request dated February 6, 1995, copies (excluding medical records) of the OPFs of PTF clerks Bonnie Powell and Dawn Hamilton. *Postal Service*, supra. *Dept. of Defense v. FLRA*, 114 S.Ct. 1006 (1994), which did not reach the “routine use” exception (see id. at 1018 fn. 3), does not require a different result.

CONCLUSIONS OF LAW

1. At all times since about 1971, and based on Section 9(a) of the Act, the APWU has been the designated exclusive collective-bargaining representative of the employees, at Postal Service's Lake Jackson, Texas facility, in the following appropriate bargaining unit:

All maintenance employees, special delivery employees, motor vehicle employees and postal clerks, but excluding all other employees, guards and supervisors as defined in the Act.

2. At all material times, and for the purposes of this case, APWU Local 5188 has been APWU's agent for various purposes, including administering the collective-bargaining agreement, respecting employees in the bargaining unit.

3. Respondent U.S. Postal Service violated Section 8(a)(5) and (1) of the Act on and after February 7, 1995, when it refused to supply the Union copies (excluding medical records) of the official personnel files (OPFs) of part-time flexible (PTFs) clerks Bonnie Powell and Dawn Hamilton.

4. The unfair labor practices found affect commerce within the meaning of 29 U.S.C. § 152(6) and (7).

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended⁴

ORDER

The Respondent, U.S. Postal Service, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain collectively with the Union, American Postal Workers Union, Local 5188, AFL-CIO, by refusing to furnish it with copies of the official personnel files (OPFs), less medical records, of part-time flexible (PTF) clerks Bonnie Powell and Dawn Hamilton.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, furnish the Union with copies of the OPFs of PTFs Bonnie Powell and Dawn Hamilton, less any medical data.

(b) Post at its facility in Lake Jackson, Texas, copies of the attached notice marked "Appendix."⁵ Copies of the notice, on forms provided by the Regional Director for Region 16, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken

⁴If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

⁵If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with the Union, American Postal Workers Union, Local 5188, AFL-CIO as the exclusive collective-bargaining representative of the Lake Jackson, Texas employees in the following appropriate unit:

All maintenance employees, special delivery employees, motor vehicle employees and postal clerks, but excluding all other employees, guards and supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, furnish the Union with copies of the OPFs of PTFs Bonnie Powell and Dawn Hamilton, less any medical data.

UNITED STATES POSTAL SERVICE